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Fax Cover Page

To: Secretary, STB

From: Charles H. Montange ENTERED
Office of Proceedings
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Part of
Public Record

Date: 18 August 2006

Message:

PYCO Industries -- feeder line application -- South Plains
Swithing, F.D. 34890

For immediate distribution

On behalf of PYCO Industries, I expressed and faxed to STB an opposition to SAW's request for a 30 day extension of all filing dates in this Board's August 16 order.

Page two of the document contains two typos: the date September 21 should in each instance read August 21.

If this Board nonetheless grants the extension requested by SAW (of which request we have still not been served as of this morning), then this proceeding cannot be concluded by October 23. In that event, PYCO intends to request immediate action on its Part 1147 petition, and PYCO further sees no reason why it should be compelled to continue to respond to SAW filings in only seven days when SAW is allowed six weeks or more to respond to PYCO. PYCO thus for itself reserves the right to seek further schedule changes. Case preparation needs will not affect KJRY, since KJRY (which as noted is ignorant of the situation in Lubbock) appears to be relying on PYCO's experts for purposes of valuation.

A corrected page two is attached in the letter that follows.

Attached page(s): 3

cc. Counsel for parties (by fax)

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corrected P.2

17 August 2006
by fax and express

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: PYCO Industries -- Feeder Line Application --
South Plains Switching, Ltd., F.D. 34890

opposition to SAW 30 day extension request
please distribute immediately

Dear Mr. Williams:

Although we have not yet been served, PYCO Industries, Inc. (PYCO) notes that the STB website indicates that South Plains Switching, Ltd., has filed a request for a 30 day extension on all filing dates in the 16 August order issued by this Board.

PYCO opposes the delay sought by SAW. By letter dated August 4 to this agency, SAW indicated that it had consulted with its experts and would be prepared to submit its valuation case on all-SAW by August 18, and separately advised PYCO's counsel it would respond to discovery on all-SAW on that date or a few days later. Because all parties seemed to favor an all-SAW alternative and because PYCO had established that a majority of shippers viewed SAW's service as inadequate, this Board issued its order of August 16 calling for SAW's case on August 18, and discovery responses on August 21.

SAW now seeks an extension of 30 days on the ground that its track valuation expert (presumably Mr. Landreth) "will be tied up on [a] bridge replacement project [in Arizona] for a considerable amount of time, making a 30-day extension the minimum amount of time required."

If SAW was not misleading the Board by its August 4 letter (i.e., saying one thing, but intending to do another), then SAW evidently waited until August 16 to activate Mr. Landreth. This indicates that SAW (and/or Mr. Landreth) literally felt only a day of work was necessary to put a case on rail valuation

together for an August 18 filing. If only a day is necessary, as we must assume SAW and/or Mr. Landreth believe, then Mr. Landreth can simply fly over to Lubbock this weekend, spend a day with SAW on its lines, and fax or e-file a report by Monday, ~~September~~ 21.¹ The trackage in all-SAW is not materially different from that in "Alternative Two," there is just more of the same. In short, the maximum extension to which SAW is entitled given the logic of the situation is until ~~September~~ 21. That extension would not require any alteration of the time schedule in the August 16 order.

On the other hand, if SAW was misleading the Board by its August 4 letter (e.g., SAW said it would file a case by August 18 but instead did nothing to prepare, or worse never intended to be prepared), then SAW should be stuck with the consequences of its failure to be in a position to do what it said. In that case, no extension should be permitted.

In short, SAW is entitled to no more than a 3 day extension until 21 ~~September~~ by its own statements, actions and omissions.

PYCO is prejudiced by the tag-team implementation of delays which SAW has conjured up for itself, both directly and through the presence of its latest wrestling partner and invitee, Pioneer Railcorp d/b/a/ Keokuk Junction Railway (KJRY). SAW's track continues to deteriorate through lack of maintenance prejudicing PYCO and other shippers. SAW's continued indefinite presence menaces shippers who absolutely cannot afford it with retaliation.

Although SAW's counsel in his Letter seeking an extension claims SAW AW somehow now will behave, the record is replete with evidence of retaliation and intimidation by SAW against any shipper that annoys SAW management. PYCO and the shippers filing letters of August 2 all have urged that, for their own protection, this proceeding needs to be concluded so a new carrier is in place on October 23.

SAW offers to agree to a 30 day extension of alternative rail service under 49 C.F.R. Part 1146, or perhaps Part 1147.²

¹ PYCO suggested it would consent to an extension through the weekend (until August 21).

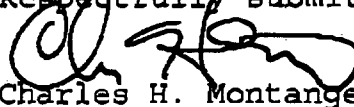
² PYCO filed a petition for relief under 49 C.F.R. Part 1147 in Finance Docket 34889. SAW responded by letter dated August 8, suggesting the relief was either moot (if PYCO's feeder line application were granted) or not permitted under public convenience and necessity (if PYCO's feeder line application were not granted). SAW offers no substantive opposition to a Part 1147 order.

An extension under Part 1146 would appear to be ultra vires due to the language in the operative statute limiting alternative service to 270 days. There is little precedent under 49 C.F.R. Part 1147, but what exists (mainly legislative history) indicates that a Part 1147 order is to be indefinite until terminated on petition of a party and proper showings. If the Board authorizes Part 1147 service here, the order should be without time limitation. PYCO should not be burdened with having to seek additional extensions each time SAW, or its tag partner KJRY, or some other interested person, conjures up a need for delay. But even if indefinite in duration, a Part 1147 order does not afford protection to the other shippers in this proceeding, and PYCO has no wish to see anyone abandoned to the ungentle embrace of SAW in Lubbock.

SAW offers no reason it cannot file its entire GCV case (SAW claims a higher GCV than NLV, and ignored NLV in its Alternative Two filing anyway) on August 18, nor any reason it cannot respond to PYCO's discovery for all-SAW on August 21. SAW on analysis offers no reason it should have any delay past August 21 for its NLV case. That gives Mr. Landreth the day he and SAW seems to think he needs to prepare the track analysis.

PYCO opposes SAW's latest attempt to derail the proceeding.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.

cc. Messrs. McFarland (fax) (SAW)
Mullins (fax) (PI/KJRY)
Sippel (fax) (USRP)
Goldstein (fax) (ADM)
Heffner (fax) (WTL)